

Building Material & Dump Truck Drivers, Local Union No. 420, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America and Leonard Worthington. Case 21-CA-16771

September 15, 1981

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN

On September 30, 1980, Administrative Law Judge Maurice M. Miller issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief, and the General Counsel filed limited cross-exceptions to, and a limited brief in support of, the Decision of Administrative Law Judge Miller.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,¹ and conclusions² of the Administrative Law

¹ The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

² On August 27, 1980, the Board issued its decision in *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), which sets forth a two-step mode of analysis for examining causation in cases alleging discriminatory discharge and violations of Sec. 8(a)(1) turning on employer motivation. In the section of his Decision entitled "Conclusions," the Administrative Law Judge used language which suggests that the Respondent had both lawful and unlawful motivations for discharging Leonard Worthington. Although the Administrative Law Judge in the instant case did not apply the precise *Wright Line* analysis, we find that his analysis is not rendered defective by *Wright Line*. The first step of the *Wright Line* approach is satisfied by Administrative Law Judge Miller's consideration of the General Counsel's presentation of a *prima facie* case that unlawful motivations contributed to the discharge. In sec. III.C.4, of his Decision, Administrative Law Judge Miller found, consistent with the General Counsel's contention, that the Respondent Union decided to discharge Leonard Worthington because Worthington gave a sworn statement relating to a charge against the Respondent to the Regional Office of the National Labor Relations Board. The Administrative Law Judge found that the Respondent's secretary-treasurer expressed the fear, before seeing Worthington's statement, that it could damage the Union's defense, and, after reading the statement, dismissed Worthington. The Administrative Law Judge's findings with respect to the Respondent's defense satisfy the second step of *Wright Line*. Administrative Law Judge Miller considered and found unpersuasive the Respondent's argument and evidence presented to prove that it dismissed Worthington because of his disregard for established rules and specific instructions. The Respondent argued that it discharged Worthington because he violated the Respondent's rules by failing to consult counsel before giving the statement to the Board. In support of this defense, the Respondent attempted to prove that it had previously promulgated and publicized a rule requiring the Respondent's business representatives to consult counsel before giving Board statements in their capacity as the Respondent's representatives. In addition, the Respondent presented evidence alleging that Worthington was spe-

Judge and to adopt his recommended Order,³ as modified herein.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Building Material & Dump Truck Drivers, Local Union No. 420, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, El Monte, California, its officers, agents, and representatives, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 2(a):

"(a) Offer Leonard Worthington immediate and full reinstatement to this former position, or if that position no longer exists, then to a substantially equivalent position, without prejudice to his seniority and other rights and privileges, and make him whole, with interest, as set forth in footnote 3 of the Board's Decision for any loss of earnings which he may have sustained by reason of the discrimination practiced against him."

2. Substitute the attached notice for that of the Administrative Law Judge.

cifically instructed to handle through counsel the matter on which he subsequently gave the Board statement. The Administrative Law Judge's finding, stated in sec. III.C.4, that the Respondent neither maintained the rule nor gave the order as alleged, establishes that in the absence of Worthington's protected activity the Respondent would not have dismissed him from employment.

We conclude therefore that although the Administrative Law Judge failed to articulate his analysis of the Respondent's motivations in the terms recommended in the *Wright Line* decision, his findings satisfy the analytical objectives of *Wright Line*. Accordingly, we affirm his conclusion that the Respondent's discharge of Worthington violated Sec. 8(a)(4) and (1) of the Act.

Member Jenkins does not consider *Wright Line* pertinent, inasmuch as this is a pretext case, in which the Respondent had only one genuine motive, an unlawful one, for its action.

³ The amount of backpay shall be computed in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest thereon to be computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

In sec. III.C.3, par. 1, of his Decision, the Administrative Law Judge cited two cases in which then Chairman Fanning dissented: *Local Union No. 204, Sheet Metal Workers' International Association, AFL-CIO (The Majestic Company)*, 246 NLRB 318 (1979); *Cato Show Printing Co., Inc.*, 219 NLRB 739 (1975). Member Fanning agrees with the proposition for which the Administrative Law Judge cited those cases, and notes that his dissents therein were based on other grounds.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT discharge employees because they have provided statements to National Labor Relations Board representatives, or because they have given testimony in connection with pending National Labor Relations Board proceedings.

WE WILL NOT interfere with, restrain, or coerce our employees, in any like or related manner, with respect to the rights guaranteed them by Section 7 of the Act.

WE WILL offer Leonard Worthington immediate and full reinstatement to his former position, or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and WE WILL make him whole, with interest, for any loss of earnings which he may have suffered by reason of our discriminatory conduct with regard to his employment tenure.

BUILDING MATERIAL & DUMP
TRUCK DRIVERS, LOCAL UNION NO.
420, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WARE-
HOUSEMEN AND HELPERS OF AMER-
ICA

DECISION

STATEMENT OF THE CASE

MAURICE M. MILLER, Administrative Law Judge: Upon a charge filed June 12, 1978, and duly served, the General Counsel of the National Labor Relations Board caused a complaint and notice of hearing, dated November 29, 1978, to be issued and served on Building Material & Dump Truck Drivers, Local Union No. 420, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, herein called Respondent Union. Therein, Respondent Union was charged with the commission of unfair labor practices affecting commerce within the meaning of Section 8(a)(4) and (1) of the National Labor Relations Act, as amended. Within Respondent Union's answer, duly filed—which was subsequently modified, in certain limited respects, when this case was heard—various factual matters set forth within

the General Counsel's complaint have been conceded. Respondent Union has, however, denied the commission of unfair labor practices.

Pursuant to notice, a hearing was held in Los Angeles, California, on September 12-14, 1979 before me. The General Counsel and Respondent Union were represented by counsel; the Charging Party herein, Leonard Worthington, was represented by a labor relations consultant. Each party was afforded an opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues. Briefs received from the General Counsel's representative and Respondent Union's counsel have been duly considered.

Upon the entire record, evidence received, and my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent Union raises no question, with respect to the General Counsel's jurisdictional claims. Upon the complaint's relevant factual declarations, which Respondent Union now concedes to be correct, and upon which I rely, I find, for the purpose of this case, that Respondent Union was, throughout the period with which this case is concerned, and remains, an employer within the meaning of Section 2(2) of the Act, engaged in commerce and business activities which affect commerce, within the meaning of Section 2(6) and (7) of the Act. Further, with due regard for presently applicable jurisdictional standards, I find assertion of the Board's jurisdiction in this case warranted and necessary to effectuate statutory objectives.

II. RESPONDENT UNION

Respondent Union functions as a labor organization; it represents members and contractually covered workers, specifically in matters related to collective bargaining with various southern California employers, engaged in the construction and building material industries, as well as producers and distributors of rock, sand, and gravel.

In that connection, Respondent Union, through its affiliation with Teamsters Joint Council No. 42, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, was—throughout the period with which this case is concerned—privy to the Southern California Master Labor Agreement negotiated for a 3-year term, 1977-80, between southern California general contractors and various labor organizations signatory thereto. That contract's supplementary Teamsters craft special working rules provided, *inter alia*, for dispatch halls, established and maintained by contractually bound local unions, from which qualified and competent workmen desiring employment within the construction and related industries would be referred for hire, by contractors, or various employers in construction-related businesses, who might desire their services.

Throughout the period with which this case is concerned, Oliver Traweck, Respondent Union's secretary-treasurer, functioned as such in that organization's behalf. At all times material herein, I find that Traweck

was, and remains, a supervisor within the meaning of Section 2(11) of the Act, functioning as Respondent Union's agent within the meaning of Section 2(2) and (13) of the Act.

III. UNFAIR LABOR PRACTICES

A. Issues

The General Counsel's complaint, herein, presents a single question for this Board's consideration. That question has been thoroughly, and competently, litigated for present purposes, it may be summarized as follows:

Did Respondent Union commit Section 8(a)(1) and (4) unfair labor practices when its secretary-treasurer, Oliver Traweck, discharged Leonard Worthington, the Charging Party herein, because he had given testimony to a National Labor Relations Board representative?

Respondent Union contends that Worthington's termination should not be considered statutorily proscribed, since he was dismissed for failure to follow his superior's previously promulgated directive that union representatives should consult with their organization's legal counsel before giving statements or other evidence to Board representatives. Further, Respondent Union contends that—should it be found to have violated the statute—this Board should, nevertheless, refrain from any discretionary remedial directive, with respect to Worthington's reinstatement, in view of the organization's subsequent discovery that Worthington had, while employed, committed "serious and willful" violations of collective-bargaining agreement provisions, and violations of law, and had purportedly abused his position of trust.

B. Facts

1. Background

a. *Worthington's employment history*

Worthington was hired by Respondent Union's secretary-treasurer, on August 2, 1976, for service as a business representative; he served in that capacity until his June 8, 1978, termination. Worthington policed Respondent Union's collective-bargaining agreements with various construction industry employers, and serviced Respondent Union's construction members, within a territory which compassed Los Angeles County's northwest quadrant. As Respondent Union's business representative, he handled grievances filed by persons who worked for signatory contractors within his geographical area, previously designated.

b. *The Redmond grievance*

On May 17, 1978, Charles Redmond, an employee of Harold E. Shugart Company, Inc., one of the construction industry firms, represented by Associated General Contractors, with which Respondent Union then had a collective-bargaining agreement, had filed a discharge grievance with a union business representative.

The grievance had initially been received and handled by Charles Tanberg, Worthington's fellow business representative. Shortly thereafter, however, Tanberg's employment as Respondent Union's business representative had been terminated, for nonrelated reasons, under circumstances which, certainly at this point, need not be detailed or considered.

Redmond, who had not been a union member when hired and had never acquired union membership, had not been hired initially through Respondent Union's dispatch hall. He had, however, been discharged—following more than 11 months of service—purportedly because he had determined to seek union membership and had decided to grieve with respect to his termination.

Upon becoming cognizant of Redmond's duly filed grievance, Respondent Union's secretary-treasurer had concluded—so his testimony, which I credit in this connection, shows—that the designated workman's discharge complaint should not be pursued, since he had presumably been hired "off the bank" without notice to Respondent Union, in violation of contractually mandated referral procedures, and therefore had no contractually validated "right" with respect to continued tenure. Traweck determined, however, that, because of Shugart's contractual commitments, Respondent Union should, rather, pursue a contract violation grievance against Shugart, bottomed on that firm's prior decision to hire Redmond, and retain his services, without a dispatch hall referral.

During a staff meeting of business representatives, which followed Tanberg's termination, previously noted—which may have been held on May 22, but which Worthington testimonially dated on May 24, without contradiction—the business representative was directed, in Tanberg's stead, to handle the problem generated by Redmond's grievance; he was directed to seek a settlement with Shugart, however, pursuant to which the latter firm would provide Respondent Union with a so-called penalty payment equivalent to 30 days' pay, plus fringe benefits; Redmond's reinstatement with full back-pay computed in conformity with Respondent Union's contract—so Worthington was told—was not to be requested.

Worthington complied with Traweck's directives; following the May 24 discussions with an Associated General Contractors' representative, functioning as Shugart's spokesman, Worthington gained a commitment that the designated penalty sum would be paid. He communicated, then, with Respondent Union's secretary-treasurer, seeking guidance with respect to whether arrangements should be made whereby the penalty sum, when paid, would be given the first registered workman on Respondent Union's then current "employment" list, qualified to fill the position, now presumably vacant, which should have been filled through a dispatch hall referral.

While a witness, Worthington testified, credibly within my view, that Respondent Union had, theretofore, followed a double policy regarding the disposition of penalty payments, received from contractually bound employers, in cases which involved contractual violations. Under certain circumstances, Worthington declared,

such penalty payments had previously been turned over to qualified "top men," currently registered on Respondent Union's dispatch hall out-of-work list; under other circumstances, penalty payments received had been remitted to Respondent Union's health and welfare fund. While a witness herein, Traweck contended that Respondent Union's master labor agreement provided for penalty payment remittances to his organization's health and welfare trust funds; he could not, however, locate or designate the contractual provision.

According to Worthington, whose straightforward testimony in this respect I credit, Secretary-Treasurer Traweck asked who the next man was—qualified and available for referral—on Respondent Union's current registration list, who would receive the money. When given the registrant's name, Traweck directed Worthington to have Shugart's penalty payment—for reasons with respect to which Worthington could merely speculate—remitted, not to the registrant, but to Respondent Union's health and welfare fund. This Worthington did; Redmond received no financial benefit, personally, from Respondent Union's contract violation settlement.

2. Worthington's termination

a. Redmond's charge against Respondent Union

On Wednesday, May 31, presumably following his receipt of notice with regard to Respondent Union's grievance settlement, Redmond filed an 8(b)(1)(A) charge, Case 31-CB-2950, against Respondent Union, with the Board's Regional Office in Region 31; therein, he charged that Respondent Union had failed to press proper "contract violation" charges against Shugart, specifically in his behalf. Worthington was, within Redmond's charge, designated as Respondent Union's representative who might be contacted.

b. Respondent Union's reaction

On Friday, June 2, Respondent Union received a copy of Redmond's charge, which the Regional Office had sent by registered mail. The Union's office manager, Aurora "Cookie" Samiano—who claimed that she considered Worthington's designation, as the union representative to contact, unusual—nevertheless wrote "Len" on the Regional Office's registered mail envelope; she placed the envelope with enclosures directly in Worthington's union office mailbox.

While a witness, Office Manager Samiano testified that, directly upon her June 2 receipt of Respondent Union's copy of Redmond's charge, she telephoned Secretary-Treasurer Traweck, who was then out of the office, to report the charge's receipt; that she told Respondent Union's secretary-treasurer she would leave the charge and related documents on his desk, for subsequent consideration; that Traweck had, then and there, declared his desire to communicate with Worthington regarding the charge; and that Respondent Union's secretary-treasurer had requested her to "get in touch" with Worthington, and communicate his request. Within my view, Samiano's testimony, in this connection, merits no credence. When cross-examined, she conceded that she follows no "set" procedure with respect to handling the

Board charges when received; that she normally submits them for Traweck's consideration, before making copies, when she "feels" that he should see them first; that, with respect to Redmond's charge, she wrote Worthington's first name on the Board's envelope, nevertheless, and "probably" put the envelope, with enclosures, directly in his mailbox; that she does not remember whether she may have "just handed" those documents to him; that she did not, however, provide Worthington, concurrently or thereafter, with any written notification that Traweck was looking for him; and that she could not remember whether she made copies of the Board documents—for Traweck, Worthington, or Respondent Union's counsel—directly following their Friday morning, June 2 receipt, or subsequently on Monday, June 5, or whether "anyone" wanted copies. Finally, Samiano conceded that Respondent Union's secretary-treasurer, when purportedly notified of the Redmond charge's receipt, on Friday, June 2, may have asked, merely, whether Worthington was "around" the union office, but that her memory was "very vague" with respect to his reaction. Subsequently, while a witness, Secretary-Treasurer Traweck, who had heard Samiano's testimony, corroborated her declaration that she had reported the receipt of Redmond's charge to him, during a June 2 conversation; he did not, however, corroborate her testimony that he had requested her to deliver a message to Worthington. Considered in totality, Samiano's testimony, which, I find, lacks consistency, will not, despite Traweck's purported corroboration, warrant a determination that she communicated with Traweck by telephone on Friday, June 2, regarding Redmond's charge, or that he requested her, then, to pass along any message to Worthington, whatsoever.

On Monday, June 5, Worthington found the Redmond charge documents in his mailbox. He discussed them with Business Representative Art Webb and Al Hernandez, Respondent Union's president. The latter suggested that Respondent Union's counsel should get copies of the charge documents. According to Worthington, whose testimony I credit in this connection, he thereupon returned the charge documents, specifically, the originals, to Samiano, for transmittal to Traweck, without making copies for himself.

With respect to certain supposedly concurrent developments, the record, herein, reflects testimonial conflict.

Respondent Union's secretary-treasurer purportedly recalled that he first saw Redmond's charge on Monday morning, June 5, when he reached his office; that he promptly sought a conference, later that morning, with Respondent Union's counsel; that, before he left his office, he tried personally to communicate with Worthington, by radio, but without success; that he then directed Officer Manager Samiano to locate Worthington and convey a message that her superior [Traweck] had to see him; that Samiano subsequently telephoned him around noon, at Counselor Pappy's office, with a report that she had finally reached Worthington, who was standing at her desk; and that he thereupon directed Samiano to notify Worthington that he should "handle these particular charges" through Respondent Union's counsel.

Traweck's testimony with respect to these developments substantially tracks and supplements Samiano's witness-chair recital, which had been previously proffered and which the secretary-treasurer had heard. However, Samiano had testified further that, with Secretary-Treasurer Traweck listening over the telephone, she had promptly relayed his directive; that Worthington had protested, contending heatedly at some length that he would "handle" the Redmond charge himself, since he had been named therein, and that "nobody" would tell him what to do with the charge; and that, following some "choice" expletives, Worthington had thereupon departed.

When cross-examined, Traweck conceded that—when his purported June 5 telephone conversation with Samiano, from Counselor Pappy's office, was in progress—both the latter and Business Representative Horace Miranda of Respondent Union had been present; neither of them was summoned, however, to corroborate the secretary-treasurer's proffered recollections with respect thereto. Further, Traweck could not "recall" mentioning his purported June 5 telephone directive to Worthington, during any subsequent conversation concerned with the latter's termination. The record, which will be reviewed subsequently herein, warrants a determination, which I make, that the secretary-treasurer's purported directive was not mentioned.

Summoned in rebuttal, Worthington denied categorically that any such June 5 telephone conversation, with Samiano functioning as Traweck's intermediary, had taken place. Worthington had previously testified that—following his discovery of Redmond's charge and his decision to return the Board's documents to Samiano for transmittal to Respondent Union's secretary-treasurer—he had telephoned the Regional Office representative handling the matter; the two had then arranged for a meeting, which would be held within the Regional Office representative's office on the following day, June 6, at 2 p.m., when Worthington would provide a statement with regard to Redmond's 8(b)(1)(A) claims.

Upon this record, Worthington's denials, with regard to his purported June 5 receipt of some cautionary directive from Traweck, which Samiano had transmitted, merit credence within my view. Respondent Union's secretary-treasurer was not a persuasive witness; I found him, throughout, disposed to proffer "slanted" testimony, calculated to dictate Respondent Union's exculpation, without regard for that testimony's possible conflict with record evidence, clearly worthy of credit, and without regard for that testimony's patent failure to comport with reasonable probabilities. On several occasions, Respondent Union's counsel felt constrained to admonish him not to volunteer testimony.

I note further, that—despite the fact that he had heard Worthington's testimonial references to their various conversations—he could not initially recall the dates of certain relevant contacts with his subordinate, precisely.

Samiano's testimony likewise struck me as contrived in this connection. Within her brief, the General Counsel's representative notes, cogently, that "gross insubordination" such as Worthington had allegedly displayed, when notified of Traweck's purportedly cautionary directive

regarding the Redmond charge's referral to union counsel, would surely have been mentioned, later—when Worthington questioned Traweck's reasons for his termination subsequently discussed herein—had such a defiant reaction really been previously manifested. However, the record clearly warrants a determination that neither Traweck's purported direction nor Worthington's purportedly proclaimed defiance was subsequently mentioned. I find, consistently with the business representative's denial, that no such restrictive instruction was communicated, and, consequently, that no confrontational rejection of Traweck's purported Monday, June 5, directive really took place.

On Tuesday, June 6, Worthington visited the Region 31 Office, and gave a Regional Office representative his sworn statement, with regard to Redmond's Board charge. Respondent Union's business representative, so the record shows, did not request a copy of his statement, directly following its completion.

c. Worthington's dismissal

On Wednesday, June 7, during a morning staff meeting with Respondent Union's business representatives—which Traweck had convened to discuss work assignments and matters of general concern—the subject of Redmond's previously filed grievance, Respondent Union's position with respect to that grievance's disposition, and Redmond's consequent Board charge, was raised.

While a witness, Worthington testified on direct examination, though somewhat summarily, with respect to presumptively relevant and material statements made by him, by Traweck, and by others during this June 7 discussion. Thereafter, pursuant to Respondent Union's request, through counsel, Worthington's previously sworn statement given in connection with the present case—wherein he had, before the hearing, provided a comparably capsulized summary of the discussion conducted during Respondent Union's June 7 staff conference, so far as that discussion related to Redmond's prior grievance and Board charge—was produced. Worthington's sworn statement, then, revealed that he had personally "tape recorded" the June 7 staff meeting discussion, together with his subsequent June 8 conversation with Respondent Union's secretary-treasurer, which will be discussed further herein, when he was discharged. Pursuant to counsel's promptly presented request, Worthington's two tape recordings were thereupon produced, together with typewritten transcriptions which purportedly reproduced their contents. Stipulations were then solicited and received that the typewritten transcriptions, which had been supplemented and slightly modified pursuant to consensus, correctly reproduced Worthington's recorded material; the transcriptions were then proffered for the record. When submitted as Respondent Union's exhibits, they were formally proffered and received for impeachment purposes solely. Upon my review of the record, however, I find that—considered in conjunction with Worthington's witness chair recitals—they will not justify a determination that his testimony should be considered materially impeached. Rather, they provide a com-

plete, concededly correct, record concerning various relevant and material conversational exchanges, with respect to which Worthington's testimony and previously produced sworn statement had provided "highlight" paraphrases, merely, filtered through fallible human memory. Presumably holding similar views, Respondent Union's counsel specifically relies on Worthington's recordings, transcribed, as correctly reflective of what was said, by him and by Traweek, during their June 7 and 8 confrontations; and I have, likewise, concluded that those transcriptions may properly be considered substantive evidence, herein. See *N.L.R.B. v. Local 90, Operative Plasterers and Cement Masons' International Association of the United States and Canada, AFL-CIO* [Southern Illinois Builders Association], 606 F.2d 189, 192 (7th Cir. 1979), enfg. 236 NLRB 329 (1978), in this connection.

During a somewhat disjointed, rambling discussion—which, *inter alia*, compassed various references to Redmond's purportedly questionable employment history, his discharge, his subsequently filed grievance, Traweek's declared belief that Respondent Union's disposition of Redwood's grievance had been contractually justified and legally privileged, and Respondent Union's purportedly difficult prior experience with a similar discharge situation—Worthington reported that he had given a Board statement with reference to Redmond's charge, and had told the truth. In material part, his transcribed record with respect to what happened then, which I would rely on for present purposes, reads as follows:

Oliver: I should say he's [?] filed charges too, against the local for the Shugart situation. No, he didn't, he had [Redmond], I believe is his name

Leonard: . . . That was the one where you told me to go and dump the non-Union guy . . . I gave a statement at the Board yesterday and I had to tell the truth about . . . why it was I went in there and didn't represent him.

Oliver: Well . . . I don't expect you to tell anything but the truth, but something like that, I think we should touch base. *I was trying to get ahold of you yesterday [sic] because I saw your name on something and where to check with you . . . I didn't really know everything that went on. The only thing, what else did you tell the Board then? What did you tell the Board?*

Leonard: Well, they wanted to know why I didn't carry on with the case, why I didn't do anything for him after we had said we could

Oliver: *Maybe I'm crazy, I don't know what you told the Board, but I'm kind of goosey now, what maybe you did tell them, because I think you was wrong. . . . The guy lied and he's trying to bury 420 . . . and it's our duty to protect 420 now. . . . And now, well, your testimony may have helped him, against 420 . . . that [charge] thing is a big long thing that specifically says 420 didn't represent the guy. Now you just indicated that you were down there testifying that you didn't represent the guy. You were told not to represent him, the way I understand it. . . .*

Oliver: *Did you get a copy of your statement? . . . You probably buried me with 420, with your statement . . . Where did you sign it? . . . We should have it By the time the day is over, I should have a copy. You know, they ask you if you want a copy We need to get a copy so we know what to say. We don't want to make a liar out of somebody else. I wish you would have touched base with somebody before you go to these—hearings so we'll all know where we're going. In fact that was one of the things we wanted to talk about today. . . . I think, pertaining to seriousness such as that, I want to at least be informed, say, what shall we do. . . .*

Oliver: I think, I don't know what you said. *I'd like to see a copy of the transcript, what you gave, so we know, cause somewhere I'll probably be involved in some kind of statement and I know, and we don't ask you to lie, we just say some places in this business you just be quiet. . . . Lean it your way, especially, if its trying to—the local, because we are here to help the local*

Oliver: . . . *I did try to get ahold of Leonard yesterday [sic]. What time were you over there?*

Leonard: About 2:00.

Oliver: *I didn't see your name until after the mail came in about 10:00. I was looking at that charge plus another one and then that's when I saw Leonard. I had missed who the rep was because I thought they'd be talking to me. Cookie and I both tried to get ahold of Leonard. I said let's get ahold of Leonard and tell him to be sure and talk to the attorney before we make any decision and that was some time in the afternoon. . . .*

Leonard: I talked to Cookie. When I was down there at Region 31 she called me on the radio and I was headed to the Building Trades.

Oliver: *Well, you'd already been up there then, huh?*

Leonard: Yea, but she didn't say nothing about it.

Oliver: *Well, I guess that's the thing. I specifically turned around and tried to get ahold of you because I wanted to touch base on that one phase because I could see us being set up.*

Leonard: Because the minute I got that in my box I took it to Al [Hernandez] and we discussed it. I guess I talked it over with Art [Webb] . . . and you were gone and I took it to Cookie and I said . . . I don't know about

[Webb]: That was last Thursday wasn't it Leonard? . . . You gave it to Cookie. . . .

Oliver: Well, I think we was correct in not trying to get his job back, because he's out there illegally. [Emphasis supplied.]

Pursuant to Traweek's request, Worthington obtained a copy of his statement later the same morning; he left it with Respondent Union's office manager, for Traweek's consideration.

That afternoon, June 7, when Worthington returned to Respondent Union's hall, he was summoned to the secretary-treasurer's office. Respondent Union President Hernandez and Business Representative James Thompson

were present. Traweek read portions of Worthington's Board statement aloud. He declared that Worthington had given "slanted" testimony which might damage him, and Respondent Union's defense.

My findings in this connection rest on Worthington's credible testimony. Respondent Union's secretary-treasurer made no reference to any June 7 afternoon conversation with Worthington, when he concluded Respondent Union's testimonial presentation. Previously, while a witness, Respondent Union's office manager had, likewise, neither recalled nor discussed such a conversation. Neither Hernandez nor Thompson was summoned to testify. Worthington's proffered recollection, regarding the conversation in question, therefore, stands without contradiction.

Worthington thereupon challenged Traweek to designate any portions which were not true. Respondent Union's secretary-treasurer, however, ignored the challenge. He handed Worthington's statement to Hernandez, who, so Worthington testified, commented that he had described the situation correctly, and to Thompson, who said nothing. Traweek directed Worthington, then, to have Respondent Union's radio removed from his car; Worthington took this to mean that he was being terminated. Respondent Union's secretary-treasurer, however, finally retracted his directive; he said he would "sleep" on the matter.

On Thursday, June 8, shortly before 5 p.m., Worthington found a written memorandum in his mailbox at Respondent Union's office. The memorandum, directed to Local No. 420's business representatives and staff, purported to notify them "again" that: ". . . when any charges are filed against this Local Union or any B.A., those charges will be handled by our Union attorney." Shortly thereafter, however, Traweek called Worthington into his office, to confirm his discharge; he did so, indirectly, by notifying Worthington that his "appointment" to have his car radio removed had been arranged.

Worthington tape-recorded his June 8 conversation with Traweek, just as he had previously recorded their June 7 staff conference discussion. A transcript, stipulated to be correct—save for one minor modification—has been proffered and received herein for the record. It reflects a rather discursive discussion—which, *inter alia*, compassed renewed references to Redmond's discharge, the merits or lack of merit of his subsequently filed grievance, the procedure which had been followed with respect to its filing and disposition; Worthington's query with respect to whether he was being discharged because Respondent Union's secretary-treasurer considered him politically "allied" with discharged Business Representative Tanberg, who had meanwhile declared his intraunion candidacy for Traweek's position; and Worthington's proffered judgments with respect to certain personal or factional conflicts within Respondent Union's staff. In material part, however, with particular reference to Worthington's termination, the transcript, which I would again rely on, reads as follows:

Oliver: We've got an appointment for you tomorrow at 8:00 at the radio place and you can get your radio out, somewhere around noon, I suspect. *You*

said you gave a deposition over there which I have a copy of. They got in on that awful quick, because we only got it the second, I think. Appears here the sixth; usually it takes longer than that to even get around to it. Usually they work through our attorneys, but I guess chance saw differently on that one.

Leonard: So I'm fired?

Oliver: Yep.

Leonard: For that?

Oliver: *Nope, for whatever. That is part of it.*

Leonard: Well, you said I lied in it. Where did I lie in it?

Oliver: *Well you're working for the Union, Leonard, not against it. . . That don't show it. That's one of the points. That does not show it.*

Leonard: Well, when you have to give a statement to the Board, that's what they expect is the the truth, isn't it?

Oliver: I would never tell you to say anything other than the truth.

Leonard: Yes, but you're firing me and saying that's part of why I'm being fired or all of it in fact.

Oliver: Why would they ask you over there to make a statement when they know they got to go through our attorneys . . . all the cases when there's any charge against the local or anyone in the local here. Our attorneys handle that. . . . *I know that I took stuff down there Monday to [Respondent Union's counsel] Pappy and he was supposed to be handling this. He said that it was a touchy situation. . . .*

Leonard: It's really something to get fired for representing a guy, or trying to.

Oliver: Well . . . I wouldn't recommend that you stress yourself too much anywhere trying to represent people out here that are taking over our members' jobs. . . .

Leonard: *If you fire me for making a Board statement, that's as cute as I can see it.*

Oliver: *Well that's not . . . well why. . . . Well anyway its done. . . .*

Oliver: . . . *Now I will say this, really, was the straw that broke the camel's back. If you haven't learned in two years to do better than that even when you're down giving deposition, you haven't learned too much, because that is definitely not what you're here for. . . . I had quite a few people, I said, read this and they thought the guy who had filed the charges had given it . . . and I said no, he's the guy that works for me testifying and made that statement supporting the guy's charge against me and 420. . . .*

Oliver: Then you testified and you knew that I was down at the attorney's . . . *we happened to be down on something else and we were giving it to him and talking to him about it and he said I'll handle it all and that's the procedure all the time when charges are against us. . . . the attorneys handle it, not us. . . . Let me ask you this. . . . if this charge was filed Wednesday [May 31] . . . and the following Tuesday*

[June 6] you're down there giving a deposition, I can't understand that.

Leonard: Cookie put the god damn thing on my desk or in my box there with my name on it, and I asked Al about it, and I asked Art about it, and Al said we better give this thing on to the attorneys, and you weren't here, so I gave it back to Cookie, and I said see that Oliver gets this, I'm sure he doesn't know what it says.

Oliver: *And when I got it Monday . . . pretty quick I went down to give it to Pappy and I said Pappy this is the type that you definitely . . . got to handle . . . and then the first thing the next day . . . you're on a working day and you're down giving a deposition like that.*

Leonard: Well, hey, what time is my appointment at the radio shop?

Oliver: 8:00. . . .

Leonard: Am I getting . . . five days vacation coming from the past year plus vacation that I have accumulated?

Oliver: I don't know. I told her to pay you everything you have coming. [Emphasis supplied.]

Shortly after leaving Respondent Union's office, so the record shows, Worthington called Samiano on his car radio; he requested a written statement showing the reason for his termination. According to Worthington, whose testimony—rather than the divergent recollections of Respondent Union's secretary-treasurer and office manager—I credit in this connection, Traweek interrupted their conversation; he came on Respondent Union's radio to ask whether Worthington wanted a termination notice which declared that he had been dismissed for giving a statement to the Board. When Worthington declared that "if that was the fact" such a written statement was what he wanted. Respondent Union's secretary-treasurer responded, so I find, with a censorious rebuke which suggested nonconcurrence. Worthington never received a written termination notice with Respondent Union's reason for his discharge shown.

3. Subsequent developments

On July 11, 1978, Redmond was notified, within a letter signed by the Regional Director for Region 31, that further proceedings with respect to Case 31-CB-2950, filed against Respondent Union and others, were not considered warranted, since there was insufficient evidence to establish that Respondent Union, or any other labor organization designated therein, had violated Section 8(b)(1)(A) of the statute. In this connection, the Regional Director noted that:

. . . you were hired in violation of the Master Labor Agreement's provisions, to which the Employer and the Unions are parties, requiring exclusive, union hiring hall referral. In these circumstances, the Union would have been privileged to request your expulsion from the job at any time during your employment. As you were employed for nearly a year in clear violation of the agreement, we conclude that you were never properly in

the unit, and that, therefore, the Union owed you no duty of representation regarding your discharge grievance.

When this case was heard, Respondent Union's counsel represented, for the record, that the Regional Director's dismissal of Redmond's charge was never appealed. However, upon the General Counsel's protest that counsel's representation should be disregarded as irrelevant, the subject was dropped.

C. Discussion and Conclusions

1. The General Counsel's contention

Within her brief, the General Counsel's representative cogently notes that the principal question presented herein relates to whether Worthington was dismissed, contrary to Section 8(a)(4) and (1) of the statute, because of his "testimony" given in connection with a Regional Office investigation of Redmond's 8(b)(1)(A) charge, against Respondent Union and two other labor organizations.

In this connection the General Counsel's representative contends first that Section 8(a)(4)'s proscriptive reach is sufficiently broad to prohibit discrimination by employers, not merely in cases where employees have been terminated for *giving testimony* at formal hearings or *filing charges* under the statute, but likewise in cases where the sole employee conduct involved consisted of *sworn statements* given to Board representatives during their investigation of some unfair labor practice case. This construction of the statute, which Respondent Union herein does not challenge, has received judicial concurrence. *N.L.R.B. v. Robert Scrivener, d/b/a AA Electric Company*, 405 U.S. 117 (1972); see, likewise, *King Louie Bowling Corporation of Missouri*, 196 NLRB 390, 397, fn. 2 (1972), and cases therein cited; compare *Nash v. Florida Industrial Commission et al.*, 389 U.S. 235, 238 (1967), wherein the Supreme Court had theretofore noted that Section 8(a)(4) reflected a clear congressional purpose to protect employees from discrimination in retaliation for giving "reports" to Board representatives, and to prevent employers from coercively interfering with this Board's channels of information.

Herein, the General Counsel's representative seeks determination that Worthington was terminated for his action in *giving a statement* to a Board representative, or, alternatively, that he was dismissed, in part, because *the content of his statement* displeased Respondent Union's secretary-treasurer.

2. Respondent's defense

Respondent Union contends, however, that Worthington was not dismissed because he gave a Board representative his statement relative to Redmond's charge, but because he did so without first consulting with Respondent Union's legal counsel. Within his brief, Respondent Union's counsel, fairly, poses the question presented, from his client's point of view, thusly:

Was Leonard Worthington fired for the testimony he gave to the Board, or for going to the Board without first consulting with the Union's attorneys? If the first, then his discharge would concededly violate Section 8(a)(4) of the Act, whether or not his testimony was true or false, and whether or not it harmed the Union's interests. *If, on the other hand, Worthington were fired for refusing to follow the Union's instructions to consult with its attorneys before giving evidence to the Board then that would not violate the Act.* . . .

The evidence presented at the hearing clearly shows that Worthington was fired for the second reason. *The Union had a clear policy requiring business agents to consult with the Union's attorneys before giving any evidence to the Board.* Leonard Worthington knew of this policy and, if Oliver Traweck and Aurora Samiano are credited, was reminded of it on June 5th, before he made arrangements to give his statement to the Board. While Worthington denied any knowledge of this rule, this is simply incredible, in view of the number of times the subject was raised at Union staff meetings over the two years Worthington worked for Local 420.

The Union's enforcement of this rule does not violate either the spirit or the letter of Section 8(a)(4). The purpose of Section 8(a)(4) . . . is to protect employees from discrimination in retaliation for giving testimony to the Board, and to prevent employers from coercively interfering with the Board's channels of information. A requirement that business agent employees first "touch base" with the Union's attorneys before giving evidence to the Board does not frustrate either of these purposes. . . .

As the Board has recognized, Unions have a legitimate interest in seeing that their business agents, organizers and representatives understand and follow Union policies. . . . Unions are bound by the words and acts of these representatives, and they are not required by the Board to tolerate insubordination, or to allow individual business agents to go their own way, oblivious of Union interests and objections. . . . *Worthington's willful disobedience of a valid Union rule, and his deliberate refusal to notify the Union that he planned to give a statement to the Board after being told by Traweck to go through the attorneys, clearly justified his discharge for refusal to follow orders.* The Union's interest in the contents of his statement does not change or excuse Worthington's flagrant insubordination. [Emphasis supplied.]

3. Discussion

Respondent Union's contention that Worthington's termination flouted no statutory proscription—*should a determination be found warranted that he was dismissed for refusing to follow a previously promulgated and publicized union policy, or some specific directive, to consult with union counsel before giving a sworn statement to Regional Office representatives*—may well be consistent with this Board's decision principles. *Local Union No. 204, Sheet Metal*

Workers' International Association, AFL-CIO (The Majestic Company), 246 NLRB 318 (1979); compare *Cato Show Printing Co., Inc.*, 219 NLRB 739, 742, 746-747 (1975). Upon this record, however, counsel's suggestion—that Worthington was, really, dismissed for that presumably privileged reason—lacks persuasive evidentiary support. My conclusion, that Respondent Union's proffered rationale for Worthington's discharge lacks factual justification, rests on several grounds.

First: Counsel's present claim, that Respondent Union had some "clear policy" requiring business representatives to consult with that organization's legal counsel, before giving statements to Board representatives, rests on record testimony which, within my view, merits no credence.

When served with a *subpoena duces tecum*, which called for the production of documents wherein such a policy had been promulgated, publicly proclaimed or reiterated—prior to Worthington's termination—Respondent Union conceded, for the record, that no *documents* reflective of that purported policy, drafted or distributed prior to July 8, 1978, could be produced. Respondent Union's contention, that the organization's business representatives had, previously, been otherwise notified, with respect thereto, rests on *testimony* proffered by Secretary-Treasurer Traweck, and two union business representatives solely. My review of the record, however, persuades me that their witness chair recitals—particularly with reference to Respondent Union's purportedly declared policy—cannot reasonably be considered probative.

In this connection, Respondent Union's secretary-treasurer claimed, while a witness, that, during two 1977 staff conferences, his organization's business representatives, Worthington included, had been specifically instructed that any Board charges, filed against Local 420, were to be "handled" through the Local's attorney. More particularly, Traweck testified that, during their first 1977 meeting, Respondent Union's business representatives had been directed to "touch base" with the Local's counsel, to "go through" such counsel, and to have counsel "present" whenever they gave statements to Board representatives. The secretary-treasurer declared that, during his second 1977 staff meeting, he had "just kept hammering" with respect to his directive, to be sure the business representatives understood it.

Nevertheless, the record herein reveals clearly that—when confronted, subsequently, with Worthington's June 7, 1978, declaration that he had given a Board statement the previous day—Traweck made no references, whatsoever, to restrictive policy directives, purportedly delineated previously. He declared his *current* thought, merely, that Worthington should have "touched base" with *him*, his "wish" that Worthington had done so, his thought that *he* should "at least be informed" before business representatives gave statements, and his purported June 6 determination—when he had, so he claimed, first become cognizant with respect to Worthington's designation, as Respondent Union's representative to contact, on Redmond's charge—that Worthington should promptly be "told" to "talk" with Respondent Union's

counsel before any "decision" might conceivably be reached with respect to their organization's position.

If, in fact, Traweek had really considered Worthington's personal failure to forward Redmond's charge, himself, to Respondent Union's counsel—coupled with his consequent failure to seek a conference with counsel, before communicating his readiness to provide a Board representative with any statement relative thereto—serious derelictions, violative of *previously promulgated* union directives, his July 7 failure even to *mention* those prior directives, or to charge Worthington with having *violated* them, must be deemed inexplicable. The fact that purportedly repeated 1977 directives were neither mentioned, nor relied on, to buttress or justify Traweek's manifest perturbation provides persuasive support, within my view, for a determination that no such directives had, then, really been promulgated, renewed, or reiterated.

I note, in this connection, that Respondent Union's office manager, so her testimony shows, routinely places Board charges directly on *Secretary-Treasurer Traweek's* desk, for his *personal* consideration. Further, I note Traweek's testimony that he, *himself*, routinely consults Respondent Union's counsel, promptly, with respect to such charges. In light of Samiano's purportedly routine practice, and Traweek's purportedly routine referral procedure—clearly calculated to forestall possible contacts, between union spokesmen and Board representatives, before union counsel had been consulted—Respondent Union's defensive presentation, within my view, suggests no persuasive reason why Respondent Union's secretary-treasurer would have, nevertheless, considered it crucially necessary to promulgate supplementary policy directives that subordinate business representatives should refer Board charges against Local 420 to their organization's attorney, and "touch base" with *him* before giving Board statements. Certainly, Respondent Union's presentation suggests no compelling reason why Traweek might conceivably have considered himself constrained to keep "hammering" with respect to such a policy directive, during staff meetings. The record, within my view, will not warrant a determination that he did.

Respondent Union's secretary-treasurer, clearly, manifested his concern—during the June 7 staff meeting now under consideration—that Worthington might have diserved Local 420's interest by giving a Board statement without having previously consulted the Local's attorney. Traweek's declaration of concern, manifested *after the fact* merely, provides no persuasive warrant, however, for a determination that he considered Worthington guilty of flouting some *previously communicated* direction.

When summoned as Respondent Union's witnesses, Business Representatives Robert Travis and Gene McFadden proffered testimony patently calculated to corroborate Traweek's purported recollection that they had previously been told, as Travis recalled:

... that under no circumstances was I to communicate with the NLRB in reference to charges either against myself or the Local Union without going through a counselor's office for a legal opinion.

Neither business representative, however, could recall the several specific meetings during which that directive, or some equivalent, had purportedly been communicated. Travis testified merely that Respondent Union's secretary-treasurer held two or three staff meetings yearly, and that, before 1978 particularly, he had reiterated Local 420's purported policy during "every other" meeting. McFadden declared, however, that three or four or more staff meetings were convened yearly, and that Traweek had reiterated his policy directive during "every" meeting, or "almost all" such gatherings.

Travis purportedly recalled a single late 1976 or early 1977 occasion when Respondent Union's secretary-treasurer had separately admonished him, *during a personal, one-on-one, conversation*, because he had discussed a pending charge with a Board representative without "talking to legal" first; he provided no details, however, with regard to that charge's substance, or the nature of his contact with a Board representative. Travis could merely reiterate his prior testimony that Traweek's admonition had recapitulated statements purportedly made at previous staff meetings, none specified.

I note in this connection Worthington's contrasting, but likewise nonspecific, testimony, proffered without challenge or contradiction, that more than 2 years previously Office Manager Samiano had personally referred him directly to a Board representative, then visiting Respondent Union's hall, who desired a statement from him, in connection with a charge filed against Respondent Union solely; Worthington had, so he testified, provided the sworn statement requested without consulting union counsel first, and without union counsel being present. So far as the record shows, he had neither been admonished nor reprimanded thereafter.

McFadden likewise purportedly recalled a staff conference, held on some date which he could not remember, during which Traweek had allegedly reiterated his restrictive instruction regarding contacts with Board representatives, and Worthington had registered a protest. Respondent Union's business representative, however, could neither remember the context within which the subject had been raised, nor could he recall whatever else might have been said, *regarding any subject whatsoever*, during the staff conference noted.

When queried with regard to Traweek's June 7, 1978, meeting, specifically, both Travis and McFadden revealed notably vague recollections. They purportedly *recalled* statements which *cannot be found* in Worthington's contemporaneous transcribed tape recording; they conceded, however, that they *could not currently recall* certain other statements, which *can be found*, clearly set forth therein.

The record further reveals tangentially that, subsequent to Worthington's discharge, both Tanberg and he were separately "tried" before Respondent Union's executive board, with respect to various "internal" union charges. McFadden, Respondent Union's vice president, concededly sat on his organization's trial board which heard the Worthington charges. Travis recalled his trial board service with respect to *Tanberg's* purported derelictions. However, he *could not recall*, positively, whether

or not he sat with Respondent Union's executive board when comparable charges against *Worthington* were heard. The business representative's conceded failure of memory, with respect to such a *comparatively recent* development, despite his testimonially proffered *verbatim* recapitulation with respect to Traweck's relevant policy directives, purportedly communicated during "every other" staff conference within a *prior* 2-year period, suggests a highly convenient memory, certainly.

Within the compass of Respondent Union's parochially circumscribed social and business world, Travis and McFadden were, within my view, merely complaisant timeservers, clearly beholden to their organization's secretary-treasurer; with due regard for their revealed witness chair demeanor, and their testimony's multiple deficiencies and divagations, I cannot consider them, for present purposes, credible witnesses.

Second: Counsel's further alternative record claim—that *Worthington*, during a June 5 conversation with Respondent Union's office manager, wherein Traweck's purported "order" had been relayed, had been specifically directed to consult with Local 420's retained attorney before giving sworn statements to some Board representative—has, previously herein, been rejected.

With respect thereto, I have, *inter alia*, noted Respondent Union's failure to summon Business Representative Miranda, whose testimony might conceivably have corroborated Traweck's proffered recollection. Consistently with well-settled principles, I draw the permissible inference that, had Miranda been summoned, his testimony would *not* have persuasively corroborated Traweck's in this connection.

Respondent Union's counsel, George Pappy, had, so Traweck testified, likewise heard his side of the June 5 telephone conversation which he purportedly had maintained with Office Manager Samiano, wherein she had supposedly been directed to convey his "instruction" regarding the procedure which *Worthington* should follow with respect to Redmond's newly filed charge. Pappy did not present himself as Traweck's corroborative witness. Since he was Respondent Union's counsel of record herein, however, I draw no adverse inference from his concurrent failure to testify.

Most significantly, however, Traweck's recorded comments, during his June 7 staff conference, and his final June 8 conversation with *Worthington*, persuasively belie his present contention that *Worthington* was given specific June 5 orders, which he subsequently flouted.

I note, in this connection, Traweck's concessions, twice during Respondent Union's June 7 staff meeting, that he presumably had been "trying to get ahold" of *Worthington* the *previous* day on Tuesday, June 6; his conjoined concession that his desire to have Respondent Union's business representatives "touch base" with someone before submitting Board statements was "one of the things" he wanted to discuss, then and there, during their June 7 conference; his further declaration that, following his prior review of Redmond's charge, both Samiano and he had "tried to get ahold" of *Worthington*, so that the latter could be told to discuss Respondent Union's position with counsel; and, likewise, his subsequent comment that he had "tried to get ahold" of *Worthington* because

he could see a possible "set up" prejudicial to Respondent Union, all these foreshadowed in Redmond's charge. On June 8, during their final conversation, Respondent Union's secretary-treasurer told *Worthington* *twice* that, on Monday, June 5, he [Traweck] had promptly taken Redmond's charge papers down to Counselor Pappy's office; however, he mentioned no telephone call received there, purportedly from Samiano, which had allegedly prompted him to give *Worthington* relevant "orders," which Samiano had been directed to convey. Rather, during their June 8 talk, Traweck told *Worthington*, so the latter's transcribed tape recording clearly shows, that he had "happened" to be down at Pappy's office with regard to another matter; that Redmond's charge had, then and there, been given over to Respondent Union's counsel; that Pappy had declared he would handle the matter; and that such procedures were followed "all the time" whenever Board charges were filed against Respondent Union. Again, however, Respondent Union's secretary-treasurer made no concurrent references, whatsoever, to prior June 5 directives, purportedly conveyed to *Worthington* through Office Manager Samiano, which had presumably been disobeyed.

With matters in this posture, I find, consistently with the General Counsel's contention, that Respondent Union has not persuasively demonstrated a purportedly "clear" previously proclaimed policy whereby business representatives have been required to consult with union counsel before giving statements to Board agents, which *Worthington* had presumably flouted. Further, with due regard for the record considered in totality, I find that Respondent Union has not persuasively demonstrated any *specific* directive, timely communicated to *Worthington* personally, that he should "handle" the Redmond charge himself "through" designated union counsel.

4. Conclusions

Upon this record, I conclude, consistently with the General Counsel's contention, that *Worthington's* June 8 termination derived, primarily, from Traweck's resentment over his presumptive decision to give a Board representative his sworn statement, relative to Redmond's 8(b)(1)(A) charge, without "touching base" first with his Local 420 superior. In that connection, so I have found, Respondent Union's secretary-treasurer had concurrently manifested his apprehension that *Worthington's* sworn statement might prejudice Respondent Union's defense with respect to Redmond's charge. Thus, consistently with the General Counsel's further contention, some determination would clearly seem warranted that Traweck's concern, particularly with regard to the substantive content of *Worthington's* Board statement, significantly *contributed* to his discharge decision. I so find.

My conclusions derive, particularly, from the testimonial record, herein, which reveals that Respondent Union's secretary-treasurer, when he learned about *Worthington's* June 6 statement, queried him, first, with respect to what he had then told the Board's Regional Office representative, while declaring his concern that *Worthington's* statement had probably "buried" him [Traweck] together with Respondent Union herein. Re-

spondent Union's secretary-treasurer then directed Worthington to procure and provide a copy of his Board statement. *He did not request a copy, I find, for transmittal to Respondent Union's counsel*, but specifically because Respondent Union's responsible leadership would not "want to make [somebody else] a liar" should they be requested to give some comparable statement.

Though Traweck's recorded and transcribed June 7 remarks clearly reveal his belated June 6 determination to notify Worthington that he should "talk" with Respondent Union's counsel, that determination, I find, merely reflected his desire to forestall some possible prejudice to Respondent Union's interest, rather than concern that Worthington might, otherwise, disregard a previously promulgated directive to confer with counsel before giving a Board statement.

When provided with a copy of Worthington's statement, later that day, Respondent Union's secretary-treasurer did not charge him with any failure to follow orders, he charged him, merely, with having given "slanted" testimony, potentially prejudicial to Respondent Union's defense.

Then, on June 8, having "slept" on the matter, Traweck, following a further conversational reference to Worthington's prior "deposition" given *quickly* to a Regional Office representative, confirmed his discharge. When Worthington asked whether he was being terminated for "that" specifically, namely, his Board statement, Traweck replied, "That is part of it." Then he commented further that Worthington's statement did not "show" he was working for Respondent Union.

Within his brief, Respondent Union's counsel contends that Traweck, during this June 8 conversation, twice *denied* that Worthington's discharge had been motivated by the fact that he had given a Board statement which might disserve Respondent Union's interests. The secretary-treasurer's denials, however, were qualified; considered in context, they carry no persuasion. Traweck's first "nope" was promptly followed by his concession, herein noted, that Worthington's statement had "partly" motivated his discharge. Later, when specifically charged with having "fired" Worthington for "making" his Board statement, Traweck bumbled; he finally declared, lamely, that "anyway" the deed was done.

Respondent Union's secretary-treasurer never taxed Worthington, specifically, with his personal failure to consult union counsel, before giving his statement; he declared his bewilderment, merely, that a Regional Office representative had taken Worthington's statement "when *they* know" they should go through Respondent Union's attorneys.

Further, Traweck characterized Worthington's failure to do "better" when giving his "deposition" as the straw which broke the camel's back. Though he declared, subsequently, that Board charges filed against Respondent Union were handled by union counsel "all the time" Traweck proffered no concurrent claim that Worthington had been, previously, so instructed together with his fellow business representatives, or that his June 6 Regional Office visit had flouted some *specific* directive previously communicated.

With matters in this posture, Worthington's dismissal clearly merits characterization as discrimination, statutorily proscribed. I so find.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

Respondent Union's activities set forth in section III, above, since it occurred in connection with that labor organization's operations referred to in sections I and II, above, had and continues to have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States. Absent correction, such activities could lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

In view of these findings of fact, and upon the entire record in this case, I make the following:

CONCLUSIONS OF LAW

1. Respondent Union, Building Material & Dump Truck Drivers, Local Union No. 420, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, is an employer engaged in commerce, and business activities which affect commerce, within the meaning of Section 2(2), (6), and (7) of the Act, as amended.

2. Respondent Union's secretary-treasurer—when he discharged Leonard Worthington from his position as Respondent Union's business representative, because Worthington had provided a sworn statement to a Board representative who was investigating a charge against Respondent Union herein—discriminated against Worthington in violation of Section 8(a)(4), and interfered with, restrained, and coerced Worthington with respect to his exercise of statutorily guaranteed rights, in violation of Section 8(a)(1) of the Act, as amended.

3. The unfair labor practices herein found are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act, as amended.

THE REMEDY

Since I have found that Respondent Union has committed, and has thus far failed to remedy, certain unfair labor practices which affect commerce, I shall recommend that it be ordered to cease and desist therefrom, and take certain affirmative action, including the posting of appropriate notices, designed to effectuate the policies of the Act.

A. Reinstatement

1. General recommendation

Specifically, since I have found that Respondent Union, through its secretary-treasurer, discharged Leonard Worthington on June 8, 1978, for statutorily proscribed reasons, I should normally recommend, despite Respondent Union's contrary plea herein below noted, that Respondent Union be required to offer Worthington immediate and full reinstatement to his former position or, if that position is unavailable, then to some substantially equivalent position without prejudice to his senior-

ity and other rights and privileges. Respondent Union vigorously contends, however, that Worthington's reinstatement should not be required. That contention must now be considered.

2. Respondent Union's contention that Worthington should not be reinstated

Respondent Union presently contends, herein, that, *subsequent to Worthington's termination*, it became cognizant of three separate "incidents" wherein Worthington had either violated the law, disregarded some relevant collective-bargaining contract's provision, or abused his delegated authority. Consequently, Respondent Union suggests that Worthington's reinstatement should not be directed, since its post-discharge discoveries have revealed these specific instances of predischarge misconduct; union counsel contends that—had these several "incidents" been discovered previously—his client's leadership would, properly, have considered them sufficiently serious to warrant the business representative's termination, counsel seeks a Board determination, therefore, that Worthington's reinstatement would not be warranted.

a. *John McDowell*

Summoned as Respondent Union's witness, longtime union member John McDowell testified that, sometime during 1977, during a period of unemployment which had lasted slightly less than 2 years, he had received a telephone call from Worthington who asked whether he was "qualified" and "available" and "near the top" of Respondent Union's out-of-work list; that he was, then, number five on that list, he believed; that Worthington, during a subsequent telephone call shortly thereafter, had requested him to come to Respondent Union's hall where he would receive a sum of money which had been "collected" as a penalty from a contractor who had hired some nonunion help; that, pursuant to Worthington's request, he had driven his pickup truck to Respondent Union's hall, where the designated contractor's representative had given him a \$500 "penalty" check; that Worthington, using his car, had then driven with him to a bank nearby where—with Worthington vouching for him—he had cashed the contractor's check; *that, while Worthington was driving with him back to Respondent Union's hall, they had "split" the penalty check proceeds, with each pocketing \$250*; and that he [McDowell] had then driven home—some considerable distance—with his truck, which had been parked meanwhile near Respondent Union's hall.

In rebuttal, Worthington testified that, sometime in November 1977, an errant contractor, pursuant to a grievance which he [Worthington] had filed, had agreed to tender a penalty payment for a contract violation; that he had, thereupon, checked Respondent Union's out-of-work list to determine the first registrant "qualified" to drive a three-axle water truck, who could have been dispatched to fill the position which the contractor had improperly filled; that he had then communicated with McDowell, who indicated that he would have "accepted" such a job referral; that he had thereupon requested McDowell to "sign the grievance" so that he could qual-

ify to receive the contractor's penalty payment; that the contractor's check had then been delivered to McDowell at Respondent Union's hall; that McDowell had declared he might have some "problem" cashing the check; that he [Worthington] had then volunteered to drive McDowell to Respondent Union's bank nearby, where he [Worthington] would be making his currently due auto loan payment; that he had declared he would, while there, vouch for McDowell's check, which the latter could then cash; that McDowell had cashed his check; and that he [Worthington] had driven McDowell back to Respondent Union's hall. Worthington denied, categorically, that he had *solicited* money, or *received* money, from McDowell.

Upon this record, Worthington's version of his November 1977 encounter with McDowell merits credence, within my view.

The longtime union member's purported memory, with respect to whatever happened then, stands revealed as notably deficient; when provided with documents presumptively calculated to refresh his recollection, his responses still reflected uncertainty. He could not initially recall the "approximate" time period within which he had received the contractor's penalty check; he could not recall, without being prompted, that he had signed a written statement with respect thereto, *dated 7 months before the hearing herein*, which Secretary-Treasurer Traweck had prepared for his signature; when subsequently shown his signed statement, he could not confirm the correctness of the relevant date set forth therein; when shown a check imprinted with a contractor's name, and dated November 7, 1977, wherein he had been designated as payee, which bore his signature endorsement on the reverse, and which bore a bank teller's dated receipt stamp on its face, he could not confirm, until prodded repeatedly, that it was the check he had cashed.

When queried with regard to his February 8, 1979, signed statement, herein noted, McDowell declared that he had not, prior thereto, discussed his November 1977 relationship with Worthington, with "*any persons*" connected with Respondent Union; that Traweck had never described how their purportedly transient, one-on-one, relationship for 15 months previously had been discovered; that he presumed Respondent Union's secretary-treasurer had somehow found out "through the grapevine," merely; and that his statement had been prepared for signature at Respondent Union's hall because, basically, "they" had known "almost everything" set forth therein beforehand.

Further, McDowell's testimony—that, following his receipt of the contractor's check, *nobody* suggested a trip to the bank; that Worthington and he merely "went for a ride" during which they "just happened" to pass Worthington's bank; and that his decision to cash the contractor's check there was a spur-of-the moment decision, which he reached while Worthington was making his auto loan payment—strains credulity.

I note, additionally, McDowell's patent failure to proffer testimony, supportive of his crucial charge, with regard to whether or not Worthington had solicited a split with respect to his penalty payment receipts; nor

did he testify with respect to *where* or *when* such a split had been suggested, *who* had first suggested it, or with respect to whether some *consensual* understanding, with respect thereto, had somehow been reached.

Mindful of his testimony's multiple deficiencies, I cannot find McDowell a credible witness. Worthington's divergent recollections—proffered straightforwardly, with persuasive candor—comport, better, with logical probabilities.

Considered in totality, Respondent Union's testimonial and documentary proffers, calculated to demonstrate finally that Worthington—though he may not have *solicited* some "settlement splitting" arrangement with McDowell specifically—had nevertheless knowingly *participated* therein, and had thereby violated Respondent Union's trust, constitute proffers smacking of contrivance, within my view.

In this connection, Respondent Union's counsel further proffered considerable testimony calculated to demonstrate: *First*, that McDowell, since he was not "top man" on Respondent Union's worklist, had not been properly selected or designated to receive a contractor's penalty payment; *second*, that Respondent Union's previously publicized policy—which defined certain *limited* circumstances under which penalty payments, received in connection with grievance settlements, might be delivered to particular registrants on the organization's regularly maintained worklist—had been flouted when Worthington solicited McDowell to sign his [Worthington's] previously filed grievance, and thereby qualify for a contractor's prospective penalty payment.

The record, however, reveals that Respondent Union's regular dispatch procedures do not, necessarily, dictate priority referrals limited to the very first registrants on Respondent Union's relevant worklists; when contractors request workmen with some *specific* skill, priority registrants whose work records reveal their possession of that *particular* skill will be referred, regardless of their possibly subordinate numerical rank on Respondent Union's list. No showing, whatsoever, has been made that, when Worthington queried McDowell with respect to whether he would have "accepted" some theoretically possible dispatch to drive a three-axle water truck, there were any priority registrants, listed *higher* than he was, who possessed that *particular* skill. Worthington's decision to call McDowell, therefore, could hardly be considered, upon this record, clearly deviant or questionable.

Further, the record, within my view, warrants a determination that Respondent Union's purportedly defined policy—pursuant to which worklist registrants, *who had not, themselves, initiated particular grievances*, could not be considered "eligible" claimants for penalty payments which might be collected from contractors who had hired workers without utilizing Respondent Union's dispatch procedures—had not been consistently followed.

Respondent Union's witness, McDowell, volunteered that "it was quite a common thing" so far as he knew, for work registrants like himself to be summoned so that they could receive penalty payments tendered by contractors who had hired workers without going through Respondent Union's hiring hall.

Worthington so testified; he declared, further, that deviations from Respondent Union's purported policy in this respect had been knowingly tolerated by Traweck, several times. And Respondent Union's secretary-treasurer, himself, conceded reluctantly that he had found himself constrained to reiterate purported union policy, in this connection, more than once. The record warrants a determination, within my view, that priority registrants—who had not initiated grievances themselves with respect to noncomplying contractors—would sometimes be considered "qualified" claimants, nevertheless, with respect to penalty payments which might eventually be received, when they subsequently signed, and thereby became facially "concerned" with respect to, contract violation grievances *previously filed*. Worthington's contacts with McDowell, so far as the record shows, had involved nothing more: Respondent Union's present claim, that Worthington and McDowell had, thereby, consummated some presumably reprehensible "grift" scheme, whereby the organization's health and welfare funds had been deprived of money which they might otherwise have received, has not, within my view, been persuasively validated.

Necessarily, therefore, Worthington's course of conduct, particularly in this connection, cannot reasonably be considered sufficiently reprehensible to render him unfit for further service, with Respondent Union herein.

b. Steven Dollar

Respondent Union's counsel proffers testimonial and documentary evidence calculated to demonstrate that Worthington, during April 1978, specifically had, personally, dispatched truckdriver Steven Dollar for available work, without a proper dispatch "introduction" slip, and without regard for Respondent Union's regular referral procedures; further counsel contends that Worthington had, thereafter, knowingly permitted his fellow business representative, Charles Tanberg, to provide Dollar with a falsely "back dated" dispatch slip, so that his referral and consequent hire, contrary to certain relevant master labor agreement provisions, might be made to appear legitimate.

With respect to these contentions, Dollar testified that, following his Monday night, April 17, 1978, layoff from a "three or four night" job with Moseman Construction, he reported to Respondent Union's hall the next morning, April 18, and signed the organization's "A" priority registration list; that, while he was doing so, Worthington told him Damon Construction needed a "working truck driver in concrete" which was his [Dollar's] specialty; and that Worthington, without giving him a dispatch slip told him merely, that Damon Construction was then "working" at a *Long Beach, California*, jobsite. According to Dollar, Worthington told him that—if he went to work for Damon in Long Beach—he would have to be given a backdated dispatch slip, since Teamsters Local 692's business representative, with *Long Beach* territorial jurisdiction, was insistent that construction industry teamsters, dispatched from other locals, could not be brought down to work on jobsites within his Local's jurisdiction, consistently with certain master

agreement provisions, unless they had been dispatched and hired, by the construction firm concerned, more than 10 days previously. Dollar testified, further, that he promptly "went down" to Damon Construction's *Long Beach* jobsite; that Damon's Long Beach foreman, however, told him no teamsters were required there, and suggested he telephone the company's office; that, when he subsequently did so, he was told to report at the firm's *South Gate, California*, yard, within Local 420's territorial jurisdiction; that he commenced work for Damon, thereafter, at the company's *Hawthorne, California*, jobsite, likewise within Respondent Union's jurisdiction; that he was "sure" he subsequently received Respondent Union's dispatch slip, which had been *mailed* to his home, and which he had presented at Damon Construction's office; and that he had worked probably 4 or 5 months for that firm.

Respondent Union's daily "call sheet" and relevant records, when produced for review, herein, revealed no relevant April 1978 work order submitted by Damon Construction, no call for Dollar's referral by name, and no April 18, 1978, dispatch notation. The union dispatcher's regular "Introduction Slip" form book, however, revealed a carbon copy of Dollar's dispatch slip to Damon Construction, dated *Tuesday, April 4*, located between comparable copies of two Monday, April 17 dispatch slips, which had exhausted those available within the book's previous page, and copies of several Monday, April 24 dispatch slips which followed.

The dispatch slip contained notations which purported to show that Dollar had been called for by name, and that he had been dispatched on April 4, to a job, location not specified, scheduled to start at 7 a.m. that very day. The carbon copy slip, further, reflected a reproduction of *Business Representative Tanberg's* signature.

Lydia Rodriguez, Respondent Union's regular dispatcher at that time, disclaimed knowledge with respect to how this slip had been, presumably, completed out of chronological sequence, or why it had been, presumably, backdated. She denied dispatching Dollar, or having had anything to do with his dispatch. Respondent Union's registrant record card, which purports to reflect Dollar's successive referrals, contains handwritten entries which purport to show that his service with Damon Construction, between April 19 and July 25, 1978, was not "verified until August 21" of that year. Those entries were not, apparently, recorded prior to their designated date.

Confronted with Respondent Union's contention that Dollar had been improperly dispatched, and that his dispatch "introduction" slip had been improperly backdated, Worthington testified that, early one April 1978 morning, Damon Construction's owner, during a telephone call which he [Worthington] took when it was transferred to him, had requested a truckdriver's dispatch, *forthwith*, qualified to replace a missing plank truckdriver in connection with a particular job then in progress which involved "curb and gutter" construction work; that he had promised to check Respondent Union's dispatch records and registration list to determine whether a qualified driver was immediately available for referral; that when he did so he had found no qualified driver currently registered for referral; that he

had, then, fortuitously discovered Dollar, at Respondent Union's downstairs counter, signing the Union's current registration list; that Dollar, who reported he had just been laid off, was known to him, from their previous contacts, as qualified to handle a plank truck in connection with curb and gutter construction; that he [Worthington] had, thereupon, reported Damon construction's request for a qualified driver "right away" which Dollar, should he be willing, could satisfy; that he had declared Dollar could be referred, then and there, pursuant to Respondent Union's special "emergency" dispatch procedure, whereby the "first qualified man you can get ahold of" may be referred, before the Union's regular 4-5 p.m. daily dispatch hour, when prompt action has been requested to forestall possible jobsite delays; and that some "conversation" with Dollar had followed, during which he [Worthington] had mentioned that Dollar's dispatch slip *might* have to be backdated.

While a witness, Worthington declared that he knew Damon Construction's yard was located in *South Gate*, within Local 420's jurisdiction; that he knew Damon, currently, had *several jobs* running; and that he knew one jobsite, which Damon was servicing from its *South Gate* yard, was located within Teamsters Local 692's jurisdiction. Worthington, so he testified, nevertheless, assumed that Dollar would be reporting, initially, to Damon's *South Gate* yard. He told Dollar that "if" he [Dollar] was, promptly, assigned to work at Damon's *Long Beach* jobsite, Local 692's business representative "might" give him trouble, because the date on his dispatch slip would show he had not been in Damon's employ for 10 days, before his assignment to that firm's Long Beach job location. According to Worthington, Dollar was told, further, that he [Worthington] considered the Long Beach business representative's strict construction of the master agreement's conceded "ten day" tenure requirement—with respect to Teamsters dispatched from one local, who have been assigned to jobsites within another local's jurisdiction—debatable, and that Local 692's business representative, and he, had "argued" with regard to their divergent "beliefs" in that connection, previously.

Worthington denied, however, that Dollar was told he would "back date" the latter's dispatch slip, or have it backdated, so that he [Dollar] could work at Damon's *Long Beach* jobsite. He denied that Dollar had been *specifically* directed to Damon's Long Beach project, or any other jobsite; according to Worthington, he merely gave Dollar the construction firm's *South Gate* yard address, and phone number, whereupon the driver left the hall. According to Worthington, again he left a note for dispatcher Rodriguez, wherein he reported Dollar's dispatch to Damon Construction; he could not explain why Dollar's referral had not been, promptly, recorded by Respondent Union's dispatcher.

When queried, further, with regard to Dollar's presumably "back dated" dispatch slip, Worthington testified that, approximately 1 week, or 4-5 days, after being dispatched, toward the end of the day, Dollar visited Respondent Union's office to report that he had not yet received his dispatch "introduction" slip; that he spoke with Worthington and Business Representative Tanberg

there; that *Business Representative Tanberg*, who checked the dispatcher's records, could not locate any copy or copies of such a slip, for him, within Respondent Union's "Introduction Slip" book; and that *Tanberg*, when told that Dollar had commenced work "about a week" previously, thereupon prepared the requisite slip with "just an approximate" date. Worthington denied that he had requested Tanberg to backdate the slip; that he had told Tanberg what date to enter thereon; or that he had, even, seen the slip in question.

Upon this record, which I have carefully reviewed with due regard for the facially discrepant recollections of Steven Dollar and Worthington, I conclude—consistently with whatever "reasonable probabilities" their synthesized testimonial recitals, conjoined with Respondent Union's documentary records, may suggest—that Worthington's course of conduct, with reference to Dollar's April 18 dispatch, reflected several deviations from Respondent's routine referral procedure, but that his conduct, considered in context, did not reflect deviations sufficiently serious to warrant this Board's determination that he should not be reinstated.

More particularly, I have concluded that Dollar's selection and designation for prompt "emergency" dispatch, pursuant to Damon Construction's purportedly urgent request for a truckdriver with certain specific qualifications, did not involve a contractually or statutorily proscribed "backdoor" referral.

Worthington's testimony that Damon's owner had, with purported urgency, requested some qualified driver's *prompt* dispatch stands, herein, without contradiction. His testimony, further, that Dollar had been offered referral, following Damon's request, because he was *qualified*; because he was *immediately available*; and because his dispatch to satisfy the designated contractor's *presumptively urgent request for a prompt referral*, without regard for his subordinate registration on Respondent Union's April 1978 out-of-work list, could be considered *permissible*, consistently with Respondent Union's consensually allowable dispatch procedure for "emergency" situations, has not been, within my view, persuasively challenged.

While a witness, Dollar was shown a previously signed sworn statement, *during cross-examination*, for the purpose of refreshing his recollection that he had signed Respondent Union's registration record, on April 18, *before* Worthington offered him referral to Damon Construction; he conceded that his recollection had been refreshed, and that he had done so. Subsequently, I permitted Respondent Union's counsel to present Dollar with the same statement, *during redirect examination*, for the purpose of similarly refreshing his recollection with respect to whether he had seen and spoken with Respondent Union's dispatcher, Rodriguez, directly following his out-of-work registration. The witness professed no *current recollection*, in this regard, but conceded that declarations, to that effect, within his previously sworn statement, represented his *past recollection* recorded.

Upon this record, Respondent Union's counsel presently contends that Worthington's testimony—generally to the effect that he, himself, dispatched Dollar without a contemporaneously prepared "introduction" slip because,

so far as he could tell, Rodriguez was not immediately "available" to process the driver's referral in conformity with Respondent Union's routine dispatch procedure, and because he [Worthington] did not "know" where she was—should merit no credence. Further, counsel suggests that Worthington's conceded failure to *search for or locate* Rodriguez so that she could handle Dollar's dispatch, and his conceded failure, alternatively, to *refer* the truckdriver to Respondent Union's dispatcher for *subsequent* routine processing, coupled with his concurrent failure, purportedly through oversight, to *request help* from "someone in the office" who could have handled the dispatcher's required paper work connected with Dollar's referral, should dictate a conclusion that he deliberately pursued a surreptitious course *calculated to bypass* Respondent Union's contractually mandated and well-settled dispatch procedures.

I have not been persuaded. The record, considered in totality, warrants determinations, which I make, that Secretary-Treasurer Traweck did not really run a consistently taut ship, wherein dispatcher Rodriguez was supposed to function strictly in conformance with Respondent Union's publicly proclaimed dispatch procedures; that Respondent Union's dispatcher and business representatives have *sometimes* been required to make "judgment calls" when summoning *presumptively qualified* registrants for dispatch regardless of their nominal registration priorities; that several union business representatives other than Worthington have sometimes reviewed registration records and dispatched registrants, within their discretion, pursuant to contractor's requests; and that their conduct, in that regard though it may sometimes have been questioned, has nevertheless been tolerated. Traweck's testimony, that business representatives who concerned themselves with Respondent Union's dispatch functions were *reprimanded* and *threatened with discharge* merits no credence. And Dollar's *proffered* witness chair recitals—considered in conjunction with his purported past recollection recorded—fails to demonstrate persuasively, within my view, that Worthington's course of conduct, with respect to his referral, really reflected a *significant* or *reprehensible* deviation from Respondent Union's standard dispatch procedures.

Following the General Counsel's proffer of Worthington's rebuttal testimony, particularly with respect to Dollar's purportedly questionable dispatch, Respondent Union's counsel requested me to *receive* the driver's previously produced and properly authenticated prehearing statement, for the present record, and then consider whether his purported recollections, set forth therein, significantly contradicted Worthington's testimonial recitals. However, I rejected counsel's suggestion that Dollar's sworn prehearing statement, *standing alone, without his testimonial recapitulation*, might properly be given probative "evidentiary" weight, so far as it might contradict Worthington's witness chair declarations.

In that connection, I suggested, alternatively, that—should a *post-hearing* review of Dollar's statement, *in camera*, which I would be willing to undertake, reveal contradictions with respect to Worthington's testimonial

recitals, never previously mentioned, but sufficiently significant to impeach his rebuttal testimony regarding Dollar's dispatch—the record could be reopened, so that the driver could be recalled, queried directly, and cross-examined, with respect thereto. Respondent Union's counsel and the General Counsel's representative stipulated their readiness to abide by my post-hearing determination with respect to whether Dollar's sworn statement does, or does not, contain factual recitals contradictory of Worthington's testimony, which would warrant a record reopening.

I have reviewed the driver's statement. It contains statements with respect to several matters which, should they be testimonially recapitulated, would tend to contradict Worthington's witness chair narrative, with respect to several, collaterally relevant, details connected with his [Dollar's] dispatch. However, the driver's sworn statement likewise contains factual declarations with respect thereto which deviate materially from, or contradict, his own witness chair recitals herein. On balance, therefore, I am satisfied that—should Dollar be recalled, and provide testimony, consistent in all respects with his sworn prehearing statement—such testimony, considered in totality, would raise new questions with regard to Dollar's purported recollections; it would not, within my view, significantly impeach Worthington's credibility, or dictate his testimony's rejection. Thus, no reopening of the record, for the purpose of questioning Dollar further, would, within my view, be warranted.

Upon this record, Worthington's course of conduct with respect to Dollar's referral, within my view, cannot reasonably be considered a contractually proscribed "back door" dispatch, which would merit Board stricture. Compare *International Association of Bridge, Structural and Ornamental Iron Workers, Local No. 433 (The Associated General Contractors of California, Inc.)*, 228 NLRB 1420 (1973), *enfd.* 600 F.2d 770 (9th Cir. 1979). Consistently with Worthington's testimony, I have found that Dollar's referral to Damon Construction was, so far as Worthington knew, keyed to a particular "emergency" situation. See *ibid.*, 228 NLRB 1420 at 1423, 1437. It did not, so far as the present record shows, reflect Worthington's commitment to some "systematic and continuous pattern of abuse" whereby job referral "patronage" might be arbitrarily, capriciously, or unfairly dispensed, and whereby loyalties toward Respondent Union or particular business representatives, consequent thereon, might be, consciously and deliberately, encouraged. *Id.*, 600 F.2d 770 at 776-777. Worthington's conduct, with respect to Dollar's dispatch, therefore, did not, within my view, render him unfit for further service in Respondent Union's hire; this Board's refusal to direct his reinstatement now would not be warranted.

With respect to Respondent Union's related contention that Worthington should be denied reinstatement because of Secretary-Treasurer Traweck's discovery, subsequent to the business representative's termination, that Dollar's dispatch slip had been backdated, little need be said. I have credited Worthington's denial that he said he would have to give Dollar a backdated slip so that he could perform services at Damon's Long Beach jobsite without being challenged by Local 692's business repre-

sentative. The record rather warrants a determination, which I have made, that Worthington merely said the driver *might* find himself challenged should Damon's management, following his referral, send him directly to work in Long Beach. Dollar, however, was not sent directly to Long Beach; his services, for some never specified period, were confined to Damon Construction's Hawthorne, California, jobsite within Local 420's jurisdiction. Thus, when he visited Respondent Union's hall sometime later, to collect the dispatch slip which, he had not yet received, his presumptive "need" for a significantly backdated slip had, for practical purposes, been minimized, if not completely eliminated. And the fact that he was, nevertheless, given such a backdated "introduction" slip, by Tanberg, *rather than Worthington*, cannot reasonably be held against the latter, within my view. Worthington's tacit, presumptively knowing, acquiescence when Tanberg dated the document, though perhaps subject to criticism, worked no fraud; in fine, Respondent Union's dispatch procedures were not *significantly* flouted thereby. And since the dispatch slip's preparation, despite its patent lack of regularity, had neither pernicious nor deleterious consequences, Worthington's passive connection therewith should not, within my view, disqualify him from reinstatement.

c. Guy Tedesco

Early in May 1978, I find, Worthington received a telephone call from the vice president of Moulder Bros., landscape contractors. Worthington was solicited to provide the firm with "a man that had all around landscape ability, a genuine landscaper" since they were then doing landscape work within a Whittier Narrows park.

Worthington was told, so his credible testimony shows, that Moulder Bros. had a two-axle "flat rack" truck, a small tractor, a hydromulcher, and a two-axle water truck, which were being used on the project.

From a previous contact, Worthington knew Guy Tedesco as a Local 420 member and qualified landscape worker; his testimony warrants a determination, which I make, that Tedesco was then Respondent Union's only qualified "landscaper" registered for possible dispatch. The business representative telephoned Tedesco late in the afternoon; the landscape worker was asked whether he wanted a job. When Tedesco replied affirmatively, Worthington requested him to come to Respondent Union's office forthwith.

With respect to what happened thereafter Tedesco testified that, Worthington asked him whether he could drive a water truck; that he replied negatively; that Worthington then went with him to Moulder Bros. jobsite; that the firm's water truck was not there; that both men returned to Respondent Union's hall; that Worthington then gave him a verbal referral, without a dispatch slip; that, when he [Tedesco] reported to the jobsite the next day, he was hired to drive the contractor's water truck; that, when this case was heard, he was still working for Moulder Bros. while performing a variety of jobs. When asked why Worthington had visited the contractor's jobsite with him, Tedesco claimed that Worthington wanted to show him where the water truck was,

and how to drive it; he conceded, however, that the water truck had not been located during their visit.

Summoned in rebuttal, Worthington corroborated most of Tedesco's testimonial proffers. He denied, however, that he had accompanied the landscape worker to Moulder Bros. jobsite so that he could show him (Tedesco) how to drive a water truck.

According to Worthington, the contractor's prior reference to a water truck, on the Whittier Narrows Park jobsite, had been merely "incidentally" proffered, during his description of the equipment which would be used on the project in question.

Worthington declared, rather, that he had waited at Respondent Union's office for Tedesco and had driven out with him merely to show him the jobsite's location, since it was located within a cul-de-sac which would have been hard to find. Worthington conceded that he had not given Tedesco a dispatch "introduction" slip, but declared that he had reported the landscape worker's referral, with a scratch pad note which had been left on dispatcher Rodriguez' desk. According to Worthington, this was considered "normal" procedure, when Respondent Union's business representatives handled referrals; Rodriguez, so Worthington testified, would then make her required record notations the next day, and mail the dispatched registrant's required clearance.

Respondent's records, however, contain no notational references with respect to Tedesco's May 1978 referral or his Moulder Bros. service.

With matters in this posture, Worthington's proffered recollections, relative to Tedesco's referral, within my view, merit credence. Worthington, though he conceded some memory lapses, testified generally with candor; the conceded fact that Respondent Union's registration and dispatch records fail to reflect Tedesco's referral cannot, standing alone, impugn his witness chair declaration, which I credit, that a timely, but less-than-formal report, with respect thereto, had been left on dispatcher Rodriguez' desk.

Respondent Union's counsel contends, substantially, that Tedesco's dispatch—which clearly bypassed that organization's regular referral procedure—reflected Worthington's predisposition to deviant behavior, and should be considered sufficient justification for this Board's refusal to direct his reinstatement. However, that contention carries no persuasive thrust. Though Worthington's course of dealing with Moulder Bros., and subsequently with Tedesco, might well be considered reflective of some departure from Respondent Union's proclaimed norms, determinations, nevertheless, seem warranted that his conduct, under the special circumstances presented, was neither arbitrary, capricious, nor calculated to subvert Respondent Union's regular dispatch procedures generally. Clearly, his treatment of Tedesco's referral cannot, reasonably, be considered derived from selfish considerations.

No record showing whatsoever has been made herein that Worthington's referral of Tedesco—for a position which, so he [Worthington] had been told, would require the landscape worker's special skills—was consummated in bad faith, or for some invidious reason. Considered in context, it should not be deemed, within my view, so

egregious as to warrant this Board's determination to withhold its conventional reinstatement remedy.

3. Conclusion

Consistently with the General Counsel's contentions, I find the record, herein, sufficient to warrant determinations that Worthington shared no special relationship with McDowell, Dollar, or Tedesco; that his dealings with them reflected no predisposition to "break" or "bend" Respondent Union's rules, with respect to grievance settlements or dispatch, for suspect reasons; and that, when he dispatched Dollar and Tedesco, Worthington neither solicited nor derived any *quid pro quo*, therefrom. With matters in this posture, my recommendation that Respondent Union should be required to offer Worthington reinstatement will be reaffirmed.

B. Backpay

In addition, Worthington should be made whole for any loss of earnings which he may have suffered, by reason of the discrimination practiced against him, by the payment to him of money equal to the sum which he normally would have earned, absent his unlawful discharge, during the period from the date of that discharge to the date on which Respondent Union offers him reinstatement, less his net earnings, if any, during the said period. Whatever backpay Worthington may be entitled to claim should be computed separately for each calendar quarter, pursuant to the formula the Board currently uses. *F. W. Woolworth Company*, 90 NLRB 289 (1950). Interest thereon shall be computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977); see, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), in this connection.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act I hereby issue, the following recommended:

ORDER¹

The Respondent, Building Material & Dump Truck Drivers, Local Union No. 420, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, El Monte, California, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Discharging employees because they have provided statements to Board representatives, or given testimony in connection with pending Board proceedings.

(b) Interfering with, restraining, or coercing employees in any like or related manner with respect to their exercise of statutorily guaranteed rights.

2. Take the following affirmative action, which is necessary to effectuate the policies of the Act, as amended:

(a) Offer Leonard Worthington immediate and full reinstatement to his former position or, if that position no

¹ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

longer exists, to a substantially equivalent position, without prejudice to his seniority and other rights and privileges, and make him whole for any loss of earnings which he may have sustained by reason of the discrimination against him, in the manner set forth within the Remedy section of this Decision.

(b) Preserve and, upon request, make available to the Board and its agents, for examination and copying, all payroll records, social security records, timecards, personnel records and reports, and all other records relevant and necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its El Monte, California, office, copies of the attached notice marked "Appendix," and comply

with the commitments set forth therein.² Copies of the notice, on forms provided by the Regional Director for Region 21, shall be posted immediately upon their receipt thereof, after being duly signed by Respondent Union's representative. When posted, they shall remain posted for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent Union to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 21, in writing, within 20 days from the date of this Order, what steps Respondent Union has taken to comply herewith.

² In the event that this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."